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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,947	09/26/2003	James Daniel Forehand	60129.0001US1	8307

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EXAMINER


ROWAN, KURT C

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/671,947	Applicant(s) FOREHAND, JAMES DANIEL	
	Examiner Kurt Rowan	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-59 is/are pending in the application.
4a) Of the above claim(s) 4 and 54 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 26-29 is/are allowed.
- 6) ☒ Claim(s) 1-25, 30-53 and 55-59 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1-5-2004</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species of the claimed invention: Figs. 1-8, Fig. 9, Fig. 10.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, at least claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over

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the prior art, the evidence or admission may be used in a rejection under 35

U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Alan Altera on August 10, 2004 a provisional election was made with traverse to prosecute the invention of Figs. 1-8, claims 1-3, . Affirmation of this election must be made by applicant in replying to this Office action. Claims 4, 54 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 59 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 54 recites the limitation "the funnel" in lines 7-8. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 2, 7, 8-10 , 16, 25, 36, 40, 41, 44, 48, 51, 53 are rejected under 35 U.S.C. 102(b) as being anticipated by Ruddell.

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The patent to Ruddell shows an apparatus for killing insects having a container 1 with a sidewall and a bottom 3. Ruddell shows a directing member 24 within the container positioned above the bottom. Ruddell shows a portion 30 of the bottom that is sloped relative to the horizontal when the container is upright. The directing member has a portion that is non-horizontal and an opening as shown in Fig. 3. Ruddell shows a barrier 8, 10 located within the container abutting the underside of the directing member such that the chamber is further defined by the barrier.

8. Claims 1-2, 5, 8, 11, 21, 22, 25, 36, 37 are rejected under 35 U.S.C. 102(b) as being anticipated by French 2 505 140.

The French patent shows a container in Figs. 2-3 having a sidewall and a bottom that includes at least a portion 1a that is sloped relative to the horizontal. French '140 shows a directing member 2a within the container and positioned above the bottom. The directing member having a portion that is non-horizontal and defining an opening above the sloped portion of the bottom such that the bottom, directing member and sidewall define a chamber that traps insect larvae. In reference to claims 21, 22, FR '140 shows the slope as being greater for the first portion of the protrusion than for the second portion of the protrusion and the bottom of the container has a slope that is less than the second slope of the protrusion noting Fig. 3.

9. Claims 1, 7, 8-10, 13-14, 51 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 00/74475 A1 (WO '475).

The WO '475 patent shows a container 12 having a sidewall and a bottom 26. WO '475 shows a portion of the bottom 28 that is sloped relative to the horizontal when the

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container is positioned upright. WO '475 shows a directing member 16 within the container and positioned above the bottom. The directing member having at least a portion that is non-horizontal and defines an opening above the sloped portion of the bottom. The bottom, directing member, and sidewall define a chamber that traps insect larvae.

10. Claim 30 is rejected under 35 U.S.C. 102(b) as being anticipated by Rawlings. The patent to Rawlings shows an insect trap having a container 1, an inverted cone 2 located within the container, a funnel 7 positioned within the container and defining an opening located above the inverted cone. Rawlings shows a barrier 6 having a first edge abutting the underside of the funnel and a second edge abutting a surface of the container.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 3, 37, 38, 39, 45, 46, 47, 52, 55, 57, 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruddell.

The patent to Ruddell shows an insect trap as discussed above. In reference to claim 3, Ruddell shows the protrusion as two plates but it would have been obvious to employ a conical shape is merely one shape is being exchanged for another and the function is the same. See *In re Dailey et al.*, 149 USPQ 47.

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13. Claims 6, 12, 23, 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over French 2 505 140.

The FR '140 patent has been discussed above and shows a concave sloped portion at the bottom. It is not clear if the sloped portion is parabolic, but it would have been obvious to employ a parabolic shape since the function is the same and no stated problem is solved. See *In re Dailey et al.*, 149 UAPQ 47. In reference to claim 12, FR '140 shows a concave shape with the protrusion at the tip of the apex. However, it would have been obvious to employ other shapes such as an inverted cone shape since the function is the same and no stated problem is solved. In reference to claims 23-24, FR '140 does not disclose a black directing member, but it would have been obvious to employ a color that absorbs substantially all visible light such as black since insects are known to be attracted to dark places.

14. Claims 55-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO '475.

The WO '475 patent shows a trap and has been discussed above. WO '475 shows a container and a directing member. It is not clear if the sidewall is translucent or if the directing member is opaque. At any rate, it would have been obvious to employ translucent sidewall to see what was in the trap and also an opaque directing member would have been obvious to attract insects to the opening.

15. Claims 11, 12, 16-18, 20, 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO '475 as applied to claim 8 above, and further in view of Ruddell.

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The patent to Ruddell and WO '475 patent show traps and have been discussed above. WO '475 does not show a barrier located within the container abutting the underside of the directing member. The patent to Ruddell shows a barrier 8, 10 abutting the under side of the directing member 24. The chamber is further defined by the barrier. In reference to claim 16, it would have been obvious to provide the trap of WO '475 with a barrier as shown by Ruddell to further reinforce the directing member.

16. Claims 15, rejected under 35 U.S.C. 103(a) as being unpatentable over WO '475 as applied to claim 8 above, and further in view of Reiter.

The WO '475 patent shows a trap as discussed above. The patent to Reiter shows a trap with water containing oviposition material. In reference to claim 15, it would have been obvious to provide WO '475 with oviposition material to attract more fish to the trap.

17. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO '475 in view of Ruddell as applied to claim 16 above, and further in view of Reiter.

The patents to Ruddell and WO '475 have been discussed above. The patent to Reiter shows an insect trap having oviposition material in the trap. In reference to claim 19, it would have been obvious to provide the trap of WO '475 as modified by Ruddell with oviposition as shown by Reiter to attract more fish to the trap.

18. Claims 30-32, 36, 42, 43, 44, 49, 50, 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO '475 as applied to claim 1 above, and further in view of Rawlings.

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The WO '475 patent shows a trap having container, a funnel positioned within the container and defining an opening. The patent to Rawlings shows a trap as discussed above having a container, a funnel positioned within the container, and an inverted cone located within the container. Rawlings shows a barrier 6. In reference to claim 30, it would have been obvious to provide the trap of WO '475 with an inverted cone shown by Rawlings to drain water from the trap. In reference to claims 31, 32, WO '475 shows water that fills the container to a level above the opening, but it would have been obvious to partially fill the container since the trap would still function the same way.

18. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO '475 in view of Rawlings as applied to claim 30 above, and further in view of Reiter.

The patent to Rawlings shows a trap that has been discussed above. The WO '475 patent shows a trap that has been discussed above. The patent to Reiter shows a trap having oviposition material. In reference to claim 33, it would have been obvious to provide the trap of WO '475 as modified by Rawlings with oviposition material as shown by Reiter to attract more fish to the trap since fish eat insects.

19. Claims 34-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rawlings.

The patent to Rawlings shows an insect trap as discussed above. In reference to claim 34, Rawlings does not disclose ventilation holes in the funnel and barrier, but it would have been obvious to employ ventilation holes wherever needed to increase the amount of air passing through the trap.

Allowable Subject Matter

19. Claims 26-29 are allowed.

Conclusion

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Dowd, Schneidmiller, Temme, Metzger, Taylor, Gabel, Fritsch, and Davis show other traps.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is 703 308-2321. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink that reads "Kurt Rowan". The signature is written in a cursive style with a large, stylized "K" and "R".

Kurt Rowan
Primary Examiner
Art Unit 3643

KR